

# TOWN OF HERNDON

*Enriching the Quality of Life and Promoting a Sense of Community*



## MEMORANDUM

To: Honorable Mayor and Members of Town Council  
Planning Commission  
Town Manager  
Department Heads  
Cemetery Manager

From: Richard B. Kaufman, Town Attorney *ABK*

Date: August 4, 2006

Re: 2006 Legislative Report

This report advises the Mayor, Town Council, Planning Commission, Town Manager, and Department Heads of major legislation of the 2006 General Assembly that affects the Town of Herndon. Part I contains items of information. Part II contains items necessary to be effectuated by ordinance, but not legally required to be implemented. Part III contains items that from a legal standpoint must be effectuated by ordinance or that I recommend be so implemented. As to the Part III items, I attach recommended draft ordinances.

### I. Information.

Severance benefits. Requires public announcement of severance benefits prior to the departure of the official benefited §15.2-1510.1, Code of Virginia (1950), as amended.<sup>1</sup>

Surplus property. Town may dispose of surplus property by online auctions or other auctions. §15.2-951, Va. Code.

Boy and girl scout access to Town real estate. Town may not deny access to or discriminate against the Boy Scouts of America or Girl Scouts of the USA as to use of Town land. §15.2-1800 (E), Va. Code.

PPEA. Town must post all accepted conceptual proposals received, whether solicited or not, and the interim or comprehensive agreement before they are entered into for a 30 day comment

<sup>1</sup> Virtually all of the information and all quoted material in this report derive from "Digest of the Acts of the General Assembly of Virginia" (2006), published for the Virginia Code Commission by the Division of Legislative Services.

period. After the interim or comprehensive agreement is entered into, all procurement records (less trade secrets and financial information) become public records. §56-575.17, Va. Code.

Cooperative procurement. Town may use cooperative purchasing for professional services except architectural and engineering services. §2.2-4304, Va. Code.

Conservation easements. Allows the Virginia Land Conservation Foundation to purchase transferred development rights and to provide grants to public bodies to purchase such development rights. §10.1-1020A(1)(2), Va. Code.

Affordable housing. Allows Arlington County to adopt an affordable housing element in its zoning ordinance. §15.2-735.1, Va. Code.

Rights of employees to contact elected officials. Clarifies right of local employees to contact State or local elected officials on matters of public concern. §15.2-1512.4, Va. Code.

Fraud auditors. Allows Town to appoint a "fraud, waste, and abuse auditor" to investigate and report on such matters and to publicize the availability of such service. §15.2-2511.2, Va. Code.

Mutual aid agreements. Allows Town, through the Police Department, to enter into a mutual aid agreement with a sheriff that does not have law enforcement authority. §15.2-1736, Va. Code.

Comprehensive plan; land use applications; transportation. Effective July 1, 2007, this bill provides for sharing with Virginia Department of Transportation for comment and suggested adjustment applications for rezonings, and subdivisions as well as comprehensive plans or amendments to the same, where such items will substantially affect transportation. The time limits for Town actions are suspended during VDOT's review. §15.2-2222.1, Va. Code (effective July 1, 2007).

Comprehensive plans shall show road improvements and any transportation improvements; may include facilities for active or passive recreation; and shall show VDOT cost estimates for the transportation improvements. These changes are effective now. §15.2-2223, Va. Code.

Effective July 1, 2007, Town must as part of its comprehensive plan develop "a transportation plan that designates a system of transportation infrastructure needs and recommendations.... The plan "should recognize and differentiate among a hierarchy of roads such as expressways, arterials, and collectors." § 15.2-2223, Va. Code (effective July 1, 2007).

The comprehensive plan must be preceded by a road improvement study. The comprehensive plan shall recommend methods of implementation including a recreation and sports resource map. §15.2-2224, Va. Code.



CIP. The capital improvements program may include road improvements and transportation improvements as provided for in the comprehensive plan. §15.2-2239, Va. Code.

Cash proffers. Town may use cash proffers for road improvements as part of the CIP and may award a contract without competition to an entity that is constructing road improvements pursuant to proffered conditions to expand scope of the road improvements utilizing cash proffers. §15.2-2303.2(C), Va. Code.

Service districts. Allows a locality to fund a service district from the locality's general fund. §15.2-2403(6), Va. Code.

Voter registration. Requires State Board of Elections to delete from the record of registered voters people who are not United States citizens. §24.2-404(A)(4)(v), Va. Code.

Referenda explanation. Allows towns to provide for preparation and printing of an explanation of referenda questions. §24-2-687(A), Va. Code.

Revenue sharing Highway funds. Towns may now receive matching grants from VDOT for highway projects. Towns can fund up to one half of its share through the use of cash proffers. §33.1-23.05, Va. Code.

Children at play signs. Town may request VDOT to erect "children at play signs," at Town's cost. §33.1-210.2, Va. Code.

Design-build contracts for transportation. Town may award contracts for construction of transportation projects on a design-build basis. §33.1-223.2:16, Va. Code.

False drivers' license. Makes selling or distributing false drivers' license a class 1 misdemeanor. §46.2-105.1(D), Va. Code.

Drivers' records. Town or any police officer may request DMV records as to any driver or vehicle. Town must pay one half normal fee; police officers are not charged a fee. §46.2-208(B)(9a), Va. Code.

Decal. Nothing in State law requires Town to issue vehicle decals. §46.2-752(G).

Speeding. Residential speed limit signs calling for heightened fine may be installed in the Town without approval of Fairfax County. Town or County's secondary system construction allocation shall pay costs of these signs. §46.2-878.2, Va. Code.

Laser speed determination device. Police officers may, but are not required to, permit motorists to observe the reading on a laser speed determination device. §46.2-882, Va. Code.



Inoperable vehicles. Town may seek reimbursement of \$50 per vehicle for any inoperable vehicles removed from the vehicle owner's property or other property. §46.2-1207, Va. Code.

Workers Compensation. An employee approved for long term disability benefits on or after age 60 "shall be eligible for a maximum of five years of disability before the employee is required to retire under service retirement. The five years includes short-term and long-term disability." §§51.1-1112 and 51.1-1123, Va. Code.

Voice-over Internet Protocol. Eliminates SCC jurisdiction over Voice Over the Internet Protocol. §56-1.3, Va. Code.

Notices of reassessment. Town (or Fairfax County for the Town) must show old and new assessment on real estate assessment notice. If the tax rate to be applied to the new assessment has been set, the notice shall set out information about the percentage change of the new tax levy. If the tax rate has not been set, the notice shall set out the next public hearing on this subject or method of its setting. This change will require a separate Town reassessment notice, as distinguished from Fairfax County's notice. §58.1-3330, Va. Code.

Delinquent tax or account collection notification. Prior to sending delinquent real estate tax, or other account to attorney or collector, the Director of Finance must send notice by mail to debtor at address established by tax records. If the Director of Finance believes such address is no longer current, the Director of Finance must search other records, including DMV records, for a current address, which must be used in the notice. §58.1-3934, Va. Code.

Telecommunications tax reform. "Completely revises taxation of communication services as follows. Applies a statewide communications sales and use tax to retail communication and video service on a completely neutral basis. The communications sales and use tax rate will be 5 percent on the following: Local Exchange; Paging; Inter-Exchange (Both interstate and intrastate); Cable Television; Satellite Television; Wireless; Voice of the Internet (VoIP)....

"The state communications sales and use tax, and state 911 fees and taxes replace the following currently billed taxes and fees; Local Consumer Utility Tax (LCUT); Local Gross Receipts Tax (BPOL) – (Only the portion above 0.5 percent currently billed to customers, where applicable); Local E-911; Virginia Relay Fee; Cable Franchise Fee.

"A statewide rights-of-way use fee will be applied to all cable TV service lines as currently applied on all local exchange telephone lines. The rate of the fee will be same as determined annually by the Virginia Department of Transportation in accordance with §56-468.1 of the Code of Virginia.

"The sales and use tax, 911 tax, and the cable rights-of-way fee assessed on consumers of video services from a single provider will be remitted to the Virginia Department of Taxation, which



will administer the distribution of the Communications Sales and Use Tax Trust Fund within 30 days of receipt of the collections for a given month.

“The redistribution of taxes and fees is intended to be revenue neutral to localities and the Wireless 911 Board and shall cover the current cost of the Virginia Relay Center.”<sup>2</sup>

VML recommends that the Town leave its telecommunication ordinances in place for now.

Water supply plan. Town may enter into a regional supply plan with Fairfax or Loudoun County, or both. §62.1-44.38.1(B), Va. Code.

Constitutional amendment. There will be a referendum in November 2006 to amend the Constitution of Virginia to “permit localities to provide a partial exemption from real property taxes for real estate and associated new structures and improvement in conservation, redevelopment, and rehabilitation areas,” as those terms relate to housing authorities. Ch. 173, 2006 Acts.

## **II. Items Effectuated by Ordinance But Not Legally Necessary to Effectuate.**

Dangerous or vicious dogs. Town may adopt an ordinance regulating dangerous and vicious dogs and criminalizing violations of this ordinance. §3.1-796.93.1(M), Va. Code.

Highway user fee. Town Council may establish a highway user fee for highways not part of the state highway system when the highway’s traffic carrying capacity is increased by construction or improvement. §15.2-2001, Va. Code.

Cable Television franchise. Creates a State imposed procedure for localities to grant cable television franchise. §15.1-2108.19, and following, Va. Code.

Subdivisions. Town may require completion of sidewalk in front of lot on existing street where sidewalk already exists on either side; a Phase I and Phase II environmental site assessment; and environmental remediation of site prior to subdivision plat approval. §15-2242(A)(9)(10)(11), Va. Code.

Town must forward preliminary subdivision plat within 10 business days of receipt to a State agency that must approve features on the plat. §15.2-2260, Va. Code.

Destroyed non-conforming building. Town may provide that a non-conforming building that is destroyed by natural disaster, may be restored to reduce or eliminate non-conformities without a variance. If the building can only be restored to its non-conforming condition, “the owner shall have the right to do so.” §15.2-2307, Va. Code

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<sup>2</sup> Digests at 78.

Transfer of development rights. Town may create a program for the transfer of development rights from lower to higher density districts and may receive development rights from Fairfax County zoning districts. §15.2-2316.2, Va. Code.

Housing rehabilitation zones. Town Council may create housing rehabilitation zones to provide incentives and regulatory flexibility in such zones. The incentives may include reduction of permit or user fees. The regulatory flexibility may include special zoning processes or exemption from specified ordinances. §36-55.64, Va. Code.

Motorized scooters. Town may regulate noise from motor driven cycles. Motor driven cycles may not be operated on the public highways of the Commonwealth. §§15.2-919 and 46.2-100, definition of "motor driven cycle"; and 46.2-911.1, Va. Code.

Towing. Town may regulate towing of motor vehicles with regulations that are no less restrictive than State standards. Signs at parking lots that advise of possible towing must include non-emergency police number or number of the responsible towing operator. §§ 46.2-1231 and 46.2-2828, Va. Code.

Retirement benefits. Town may establish a retirement benefit restoration plan. §51.1-1302, Va. Code.

Elderly and disabled tax relief. Raises the maximum financial worth from \$340,000 to \$540,000. §58.1-3211(4), Va. Code. The Mayor and Town Council usually track any changes in this regard that Fairfax County may make.

Local tourism zone. Town may establish tourism zone with tax incentives regulating flexibility and reduced permit fees. §58.1-3851, Va. Code.

### **III. Items that Legally Must be Effectuated or are Recommended to be Effectuated by Ordinance.**

Multiple awards. Where terms and conditions for multiple awards are included in the request for proposal, Town may award contract under competitive negotiation for more than one offeror. §2.2-4301, definition of complete negotiation. §30-309(i), Herndon Town Code (2000), as amended should be amended to accommodate this change.

Design build. Town without approval of the Design-Build Construction Management Review Board may enter into a fixed price design-build or construction management basis contracts for large construction contracts. §2.2-4303(D), Va. Code. §30-309(g), Herndon Town Code should be amended.



Bid payment, and performance bonds. Requires bid, payment, and performance bonds on State funded transportation projects. §§2.2-4336 and 2.2-4337, Va. Code. §30-312(10), Herndon Town Code should be amended.

Erosion and sediment control. "Provides definitions ... in the Erosion and Sediment Control ... Act[] to clarify ... acceptable flow rates from storm water runoff ...." §10.1-560, definitions of "peak flow rate," "runoff volume," and "water quality volume" and §10.1-561(A), Va. Code.<sup>3</sup> §§26-48 and 26-49, Herndon Town Code should be amended.

Civil Penalty for police emergency response. Authorizes judge to order restitution of police emergency response for certain traffic and DUI offenses, in addition to Town's ability to recover this penalty by a separate civil action. §15.2-1716, Va. Code. §42-10, Herndon Town Code should be amended.

Civil penalties for zoning violation. Raises the maximum civil penalty for the initial offense from \$100 to \$200 and for second and subsequent offenses from \$250 to \$500. §15.2-2209, Va. Code. §78-203(g), Zoning Ordinance, Herndon Town Code, may be amended to use this new authority requested by the Town Council.

Planning commission. Town Council may remove a planning commissioner who misses three meetings in a row or any four meetings in a 12-month period. §15.2-2212, Va. Code. §2-40, Herndon Town Code should be amended.

Cable television easements; subdivisions. Town's subdivision ordinance must provide for shared public utility easements for electricity, telecommunications, and cable television. §15.2-2241(A)(6), Va. Code. §70-49(34) Subdivision Ordinance, should be so amended.

Variances. Hardship to support the variance must relate to the subject property. The property benefited by a variance "shall be treated as conforming for all purposes under State law and Town ordinance ...." §15.2-2309, Va. Code. §78-202(d)(4), Zoning Ordinance, should be so amended.

Emergency management. Town must maintain an agency of emergency management. The Mayor or Town Manager shall appoint a coordinator of emergency services with the consent of the Town Council. §44-146.19(A)(B)(4), Va. Code. §38-36, Herndon Town Code should be amended.

Meals tax. Excludes voluntary gratuity and "mandatory gratuity" over 20% of the sale price of the meal from the meals tax. §58.1-3840, Va. Code. §30-405, Herndon Town Code should be amended.

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<sup>3</sup> Digest, at 13.

BPOL. Made technical changes to the provisions the General Assembly requires in BPOL ordinances, including selection of a BPOL license tax due date between March 1 and May 1. §58.1-3703.1. §§ 30-211, definition of “jeopardize [sic] by delay” and 30-213(a)(b), Herndon Town Code should be amended.

Transient lodging tax. Clarifies that the tax only applies to sleeping rooms, not other space rented in a hotel or motel. §58.1-3843, Va. Code. §30-176, definition of lodging, Herndon Town Code should be amended.

Delinquent tax penalties. Delinquent tax penalties shall not exceed the amount of the tax assessable. §58.1-3916, Va. Code, §§ 30-39, 30-181, and 30-407, Herndon Town Code should be amended.

RBK/cef/cmh

attachments

14 draft ordinances

- w/copy of attachments  
c. Viki L. Wellershaus, Town Clerk



## TOWN OF HERNDON, VIRGINIA

### ORDINANCE

\_\_\_\_\_, 2006

**Ordinance - Amending the Herndon Town Code competitive negotiations procurement provision to allow the award of a contract to more than one offeror if the terms and conditions for multiple awards are included in the request for proposal.**

BE IT ORDAINED by the Council of the Town of Herndon that:

1. Section 30-309. Competitive negotiations, Herndon Town Code (2000), as amended, is amended and reordained as follow:

**Sec. 30-309. Competitive negotiations.**

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(i) *Evaluation factors, discussion and award with regard to professional services.* The town council shall award any contract under this subsection where the cost of the procurement exceeds or is expected to exceed \$30,000.00; and the procurement official or officer shall award any such contract when the cost for such procurement is or is expected to be less than \$30,000.00. The procurement official or officer shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses to the request for proposals and with the emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. Such offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. At the discussion stage, the procurement official or officer may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of such discussions, on the basis of evaluation factors published in the request for proposal and all information developed in the selection process to this point, the procurement official or officer shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the town can be negotiated at a price considered fair and reasonable, the procurement official or officer may award or recommend as appropriate that award be made to that offeror. Otherwise, negotiations conducted with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Nothwithstanding the foregoing, if the terms and conditions for multiple awards are included in the Request for Proposal, a procurement official or officer, or the town council, may award contracts to more than one offeror. Should the procurement

official or officer or town council, as appropriate determine in writing in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

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2. This ordinance shall be effective on and after the date of its adoption.



TOWN OF HERNDON, VIRGINIA

ORDINANCE

\_\_\_\_\_, 2006

**Ordinance - Amending the Herndon Town Code competitive negotiations procurement provision to allow the Town to enter into a fixed price design build or construction management contract without Design-Build Construction Management Review Board approval.**

BE IT ORDAINED by the Council of the Town of Herndon that:

1. Section 30-309. Competitive negotiations, Herndon Town Code (2000), as amended, is amended and reordained as follow:

**Sec. 30-309. Competitive negotiations.**

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(g) *Construction.* Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the town council and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination:

- (1) For the alteration, repair, renovation or demolition of buildings when the contract price is not expected to exceed ~~\$500,000.00~~ \$1,000,000; or
- (2) For the construction of highways and any draining, dredging, excavation, grading or similar work upon real property; or
- (3) For the construction, alteration, repair, renovation or demolition of buildings by the town council on a fixed price design-build basis or construction management basis under §2.2-4308, Code of Virginia when the contract is not expected to cost more than \$1,000,000.

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2. This ordinance shall be effective on and after the date of its adoption.

TOWN OF HERNDON, VIRGINIA

ORDINANCE

\_\_\_\_\_, 2006

**Ordinance - Amending the Herndon Town Code procurement transactions provision to require bid, payment, and performance bonds on State funded transportation projects.**

BE IT ORDAINED by the Council of the Town of Herndon that:

1. Section 30-312. Procurement transactions, Herndon Town Code (2000), as amended, is amended and reordained as follow:

**Sec. 30-312. Procurement transactions.**

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**(10) Bonds.**

- a. *Bid bonds.* Except in cases of emergency, all bids or proposals for construction contracts (including transportation – related projects authorized under §33.1-12 and partially or wholly funded by the Commonwealth) in excess of \$25,000.00 shall be accompanied by a bid bond from a surety company selected by the bidder which is legally authorized to do business in the commonwealth, as a guarantee that if the contract is awarded to such bidder, that bidder will enter into the contract for the work mentioned in the bid. The amount of the bid bond in such cases shall be in the amount equal to five percent of the amount bid.

1. A bid bond shall be forfeited to the town as liquidated damages upon the bidder's or offeror's failure to execute a contract awarded to him within seven days of the award or upon the bidder's or offeror's failure to furnish any required performance or payment bonds in connection with a contract awarded to him within seven days of the award unless, and only to the extent that, the seven-day requirement is waived in writing by the procurement official.

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b. *Performance and payment bonds.*

1. Upon the award of any construction contract (including transportation – related projects authorized under §33.1-12 and partially or wholly funded by the Commonwealth) exceeding \$25,000.00 awarded to any prime contractor, such contractor shall furnish to the town the following bonds:



- i. A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract.
- ii A payment bond in the sum of the contract amount. Such bond shall be for the protection of claimants who have or fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in the prosecution of the work provided for in such contract, and shall be conditioned upon the prompt payment for all such material furnished or labor supplied or performed in the prosecution of the work. Labor or material shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

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- 2. This ordinance shall be effective on and after the date of its adoption.

TOWN OF HERNDON, VIRGINIA

ORDINANCE

\_\_\_\_\_, 2006

**Ordinance - Amending the Herndon Town Code Erosion and Sediment Control provision to provide definitions to clarify acceptable flow rates from storm water runoff.**

BE IT ORDAINED by the Council of the Town of Herndon that:

1. Section 26-48. Definitions, Herndon Town Code (2000), as amended, is amended and reordained as follow:

**Sec. 26-48. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

[Please insert alphabetically]

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Peak flow rate means the maximum instantaneous flow from a given storm condition at a particular location.

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Runoff volume means the volume of water that runs off the land development project from a prescribed storm event.

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Water quality volume means the volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project.

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2. Section 26-49. Erosion and sediment control program, Herndon Town Code (2000), as amended, is amended and reordained as follow:

**Sec. 26-49. Erosion and sediment control program.**

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(d) Any land-disturbing activity that provides for stormwater management intended to address any flow rate capacity and velocity requirements for natural or manmade channels shall satisfy the flow rate capacity and velocity requirements for natural or manmade channels if the practices are designed to (i) detain the water quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce the allowable peak flow rate resulting from the 1.5, 2, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or manmade channels as defined in any regulations promulgated by the Commonwealth's Soil and Water Conservation Board.

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3. This ordinance shall be effective on and after the date of its adoption.

**TOWN OF HERNDON, VIRGINIA**

**ORDINANCE**

\_\_\_\_\_, 2006

**Ordinance - Amending the Herndon Town Code to authorize judges to order restitution of police emergency response expenses for certain traffic and DUI offenses.**

BE IT ORDAINED by the Council of the Town of Herndon that:

1. Section 42-10. Civil penalty for certain driving offenses, Herndon Town Code (2000), as amended, is amended and reordained as follow:

**Sec. 42-10. Civil Penalty for certain driving offenses.**

(a) A person convicted of violating any of the following provisions shall be liable to the town for restitution at the time of sentencing or in a separate civil action for reasonable expenses incurred by the town, when providing an appropriate emergency response to any accident or incident related to such violation:

- (1) The provisions of §§ 18.2-51.4 or 18.2-266, Code of Virginia, or a similar ordinance, when such operation of a motor vehicle while so impaired is the proximate cause of the accident or incident;
- (2) The provisions of Article 7 (§ 46.2-852 et seq.) of Chapter 8 of Title 46.2, Code of Virginia, relating to reckless driving, when such reckless driving is the proximate cause of the accident or incident;
- (3) The provisions of Article 1 (§ 46.2-300 et seq.) of Chapter 3 of Title 46.2, Code of Virginia, relating to driving without a license or driving with a suspended or revoked license; and
- (4) The provisions of § 46.2-894, Code of Virginia, relating to improperly leaving the scene of an accident.

(b) Personal liability under this section for reasonable expenses of an appropriate emergency response shall not exceed \$1,000.00 in the aggregate for a particular accident or incident occurring in the town. In determining the "reasonable expenses," the town may bill a flat fee of ~~\$100.00~~ \$250.00; or the town may bill a minute-by-minute accounting of the actual costs incurred based on the current average per minute police response cost determined in writing by the town manager each July 1 and filed in the office of the town clerk.

(c) As used in this section, "appropriate emergency response" includes all costs of providing law-enforcement services.



(d) In any civil action brought under this section, the town must prove the personal liability for reasonable expenses of an appropriate emergency response by a preponderance of the evidence.

(e) The court may order as restitution the reasonable expenses incurred by the town for such responding law enforcement services.

(f) The provisions of this section shall not preempt or limit any remedy available to the commonwealth or to the town to recover the reasonable expenses of an emergency response to an accident or incident not involving impaired driving, operation of a vehicle or other conduct as set forth herein.

2. This ordinance shall be effective on and after the date of its adoption.

TOWN OF HERNDON, VIRGINIA

ORDINANCE

\_\_\_\_\_, 2006

Ordinance - Amending the Zoning Ordinance (2006) to raise the maximum civil penalty for the initial offense from \$100 to \$200 and for second and subsequent offenses from \$250 to \$500; ZOTA \_\_\_\_\_.

RECITAL

In adopting this zoning ordinance the Town Council has considered the factors set out in § 15.2-2284, Virginia Code.

BE IT ORDAINED by the Council of the Town of Herndon that:

1. Section 78-203. Enforcement and remedies, Zoning Ordinance (2006), Herndon Town Code (2000), as amended, is amended and reordained as follow:

**Sec. 78-203. Enforcement and remedies.**

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**(g) Civil violations.**

- (1) **Penalty.** Any person, firm or corporation who as the owner of any land, building or structure, or the agent thereof having possession or control of such property as employee, lessee, tenant, architect, builder, contractor or otherwise, who permits, assists in or attempts any violation of this chapter, whether by act or omission, shall be liable for a civil penalty for each individual offense described in Table 78-203.Gg: Summary of Civil Violations, as follows:

TABLE 78-203(g): SUMMARY OF CIVIL VIOLATIONS

Offense	Penalty for Initial Summons (in \$)	Penalty for Each Additional Summons (in \$)
Establishing a prohibited use (except the conduct of an un-permitted boarding house, un-permitted rooming house, un-permitted inn, or of an un-permitted transient lodging business)	<del>\$100.00</del> <u>\$200.00</u>	<del>\$250.00</del> <u>\$500.00</u>
Failure to obtain zoning inspection permit	<del>100.00</del> <u>200.00</u>	<del>250.00</del> <u>500.00</u>



Violation of home based business use-specific standards	<del>100.00</del> <u>200.00</u>	<del>250.00</del> <u>500.00</u>
Failure to properly screen material from public view as required	<del>100.00</del> <u>200.00</u>	<del>250.00</del> <u>500.00</u>
Failure to comply with an approved conditional use permit or special exception	<del>100.00</del> <u>200.00</u>	<del>250.00</del> <u>500.00</u>
Failure to maintain site in accordance with approved site plan	<del>100.00</del> <u>200.00</u>	<del>250.00</del> <u>500.00</u>
Failure to provide trash receptacle enclosure as required	<del>100.00</del> <u>200.00</u>	<del>250.00</del> <u>500.00</u>
Conducting outdoor storage, sales, or display of materials required to be within a completely enclosed building	<del>100.00</del> <u>200.00</u>	<del>250.00</del> <u>500.00</u>
Failure to conform to the provisions of the Chesapeake Bay regulations	<del>100.00</del> <u>200.00</u>	<del>250.00</del> <u>500.00</u>
Failure to obtain a floodplain permit prior to conducting use	<del>100.00</del> <u>200.00</u>	<del>250.00</del> <u>500.00</u>
Failure to comply with performance standards for noise or odor control	<del>100.00</del> <u>200.00</u>	<del>250.00</del> <u>500.00</u>
Encroachment of a structure or building into a required setback or yard	<del>100.00</del> <u>200.00</u>	<del>250.00</del> <u>500.00</u>
Exceeding the height limitation for a building or structure, as set out in various provisions of this chapter	<del>100.00</del> <u>200.00</u>	<del>250.00</del> <u>500.00</u>
Failure to obtain an approved special exception, as set out in various provisions of this chapter	<del>100.00</del> <u>200.00</u>	<del>250.00</del> <u>500.00</u>
Violation of the single-family dwelling unit occupancy limitations	<del>100.00</del> <u>200.00</u>	<del>250.00</del> <u>500.00</u>
Illegally establishing an accessory dwelling unit, as set out in various provisions of this chapter	<del>100.00</del> <u>200.00</u>	<del>250.00</del> <u>500.00</u>
Establish an unauthorized dwelling unit	<del>100.00</del> <u>200.00</u>	<del>250.00</del> <u>500.00</u>
The unlawful keeping, harboring or maintaining of livestock	<del>100.00</del> <u>200.00</u>	<del>250.00</del> <u>500.00</u>
The keeping or maintaining of shrubbery, plantings or any structure that creates a visibility problem	<del>100.00</del> <u>200.00</u>	<del>250.00</del> <u>500.00</u>
Displaying merchandise or conducting business	<del>100.00</del> <u>200.00</u>	<del>250.00</del> <u>500.00</u>



between the street line and the building setback area		
Erecting, altering, relocating or displaying a sign on private property without first obtaining a permit	100.00 <u>200.00</u>	250.00 <u>500.00</u>
Erecting or posting off-site signs on private property	100.00 <u>200.00</u>	250.00 <u>500.00</u>
Erecting moving signs, such as pennants, flags, and the like on private property	100.00 <u>200.00</u>	250.00 <u>500.00</u>
Posting strings of lights in windows or on buildings	100.00 <u>200.00</u>	250.00 <u>500.00</u>
Failure to meet stated conditions of sign permit	100.00 <u>200.00</u>	250.00 <u>500.00</u>
Erecting, reconstructing, altering or restoring a building or structure in a heritage preservation district without obtaining a current, valid certificate of appropriateness	100.00 <u>200.00</u>	250.00 <u>500.00</u>
Failure to meet stated conditions of certificate of appropriateness	100.00 <u>200.00</u>	250.00 <u>500.00</u>
Violation of fencing standards	100.00 <u>200.00</u>	250.00 <u>500.00</u>
Violation of performance standards	100.00 <u>200.00</u>	250.00 <u>500.00</u>
Violation of standards for refuse enclosures	100.00 <u>200.00</u>	250.00 <u>500.00</u>
Failure to park a recreational vehicle in an approved area in a residential district as required	100.00 <u>200.00</u>	250.00 <u>500.00</u>
Failure to park a commercial vehicle in an approved area in a residential district as required	100.00 <u>200.00</u>	250.00 <u>500.00</u>
The temporary or permanent occupancy of a recreational vehicle while parked within the limits of the town	100.00 <u>200.00</u>	250.00 <u>500.00</u>
Any violation related to a sign not requiring a permit	100.00 <u>200.00</u>	250.00 <u>500.00</u>
Parking in front or side yard on unpaved surface	100.00 <u>200.00</u>	250.00 <u>500.00</u>
Creation of excessively large paved surface for front or side yard parking	100.00 <u>200.00</u>	250.00 <u>500.00</u>
Creation of excessively large impervious surface on a lot improved with a single-family detached dwelling	100.00 <u>200.00</u>	250.00 <u>500.00</u>

- (2) ***Cumulative penalties.*** Each day during which the violation is found to have existed shall constitute a separate offense. However, specific violations arising from the same



operative set of facts shall not be charged more frequently than once in any ten-day period, and a series of specified violations arising from the same operative set of facts shall not result in civil penalties which exceed a total of \$5,000.00.

- (3) ***Limitations.*** No provision in this section shall be construed to allow the imposition of civil penalties (i) for activities related to land development or, (ii) for violation of any provision of this chapter relating to the posting of signs on public property or public rights-of-way.
2. This ordinance shall be effective on and after the date of its adoption.

## TOWN OF HERNDON, VIRGINIA

### ORDINANCE

\_\_\_\_\_, 2006

**Ordinance - Amending the Herndon Town Code to allow for the removal of a planning commissioner who misses three meetings in a row or any four meetings in a 12-month period.**

BE IT ORDAINED by the Council of the Town of Herndon that:

1. Section 2-40. Removal of members, Herndon Town Code (2000), as amended, is amended and reordained as follow:

**Sec. 2-40. Removal of members.**

Any member of the planning commission may be removed from office for malfeasance in office. Notwithstanding the foregoing provision, a member of a local planning commission may be removed from office by the town council without limitation in the event that the commission member is absent from any three consecutive meetings of the commission, or is absent from any four meetings of the commission within any 12-month period, beginning upon the date of the planning commissioner's assumption of office. In either such event, a successor shall be appointed by the town council for the unexpired portion of the term of the member who has been removed.

2. This ordinance shall be effective on and after the date of its adoption.



TOWN OF HERNDON, VIRGINIA

ORDINANCE

\_\_\_\_\_, 2006

**Ordinance - Amending the Herndon Town Code Subdivision provisions to provide for shared public utility easements for electricity, telecommunications, and cable television.**

BE IT ORDAINED by the Council of the Town of Herndon that:

1. Section 70-49. Requirements, Subdivision Ordinance, Herndon Town Code (2000), as amended, is amended and reordained as follow:

**Sec. 70-49. Requirements.**

The requirements for a preliminary plan are as follows:

\*\*\*

- (34) Provision of easements on adjoining properties for:

\*\*\*

- i. Common or shared easements to franchised cable television operators furnishing cable television and to public service corporations furnishing cable television, gas, telephone and electric service to the proposed subdivision according to the standards of State subdivision law.
- i-j. Other.

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2. This ordinance shall be effective on and after the date of its adoption.

## TOWN OF HERNDON, VIRGINIA

### ORDINANCE

\_\_\_\_\_, 2006

**Ordinance - Amending the Zoning Ordinance (2006) to treat the property for which a variance has been granted as conforming for all purposes under state law and town ordinance; ZOTA \_\_\_\_\_.**

#### RECITAL

In adopting this zoning ordinance the Town Council has considered the factors set out in § 15.2-2284, Virginia Code.

BE IT ORDAINED by the Council of the Town of Herndon that:

1. Section 78-202. Specific standards and other requirements for applications for development approval, Zoning Ordinance (2006), Herndon Town Code (2000), as amended, is amended and reordained as follow:

**Sec. 78-202. Specific standards and other requirements for applications for development approval.**

\*\*\*

(d) *Variances.*

\*\*\*

(4) *Standards.*

- a. A variance ~~shall~~ may be approved in the event that the board of zoning appeals finds that all of the following standards are met:

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3. Because of one or several conditions identified in section 78-202(d)(4)a.2, the strict application of this chapter would produce undue hardship relating to the property, and effectively prohibit or unreasonably restrict the use of the property.

\*\*\*

- c. Notwithstanding any other provision of law, the property upon which a property owner has been granted a variance on or after July 1, 2006 shall be



treated as conforming for all purposes under state law and town ordinance;  
however the use or the structure permitted by variance may not be expanded.

2. This ordinance shall be effective on and after the date of its adoption.

**TOWN OF HERNDON, VIRGINIA**

**ORDINANCE**

\_\_\_\_\_, 2006

**Ordinance - Amending the Herndon Town Code provision to comply with the General Assembly requirement that Town maintain an agency of emergency management.**

BE IT ORDAINED by the Council of the Town of Herndon that:

1. Section 38-36. Composition; powers and duties. Herndon Town Code (2000), as amended, is amended and reordained as follow:

**Sec. 38-36. Composition; powers and duties.**

The police department of the town shall consist of the chief of police and such other officers and employees of such ranks and grades as may be necessary to discharge the duties conferred upon it by law. The police department shall be responsible for the preservation of the public peace, prevention of crime, apprehension of criminals, protection of the rights of persons and property, and enforcement of the laws of the commonwealth, the ordinances of the town and all rules and regulations made in accordance therewith; and shall serve as the agency of emergency management for the town. The chief of police and the other members of the police force of the town shall have all the powers and duties of police officers as provided by the laws of the commonwealth. In the discharge of their duties as police officers, such officers shall be under the sole supervision of the chief of police or his designee.

2. This ordinance shall be effective on and after the date of its adoption.



## TOWN OF HERNDON, VIRGINIA

### ORDINANCE

\_\_\_\_\_, 2006

**Ordinance - Amending the Herndon Town Code provision to exempt mandatory gratuities charged by the seller of a meal of 20% or less of the sale price of the meal from the meals tax.**

BE IT ORDAINED by the Council of the Town of Herndon that:

1. Section 30-405 Gratuities and service charges, Herndon Town Code (2000), as amended, is amended and reordained as follow:

**Sec. 38-405. Gratuities and service charges.**

(a) Where a purchaser of a meal provides a gratuity for an employee of a seller, and the amount of the gratuity is wholly in the discretion of the purchaser, the gratuity is not subject to the tax imposed by this article, whether paid in cash to the employee or added to the bill and charged to the purchaser's account, provided in the latter case, the full amount of the gratuity is turned over to the employee by the seller.

(b) An amount or percent, whether designated as a gratuity, tip or service charge, exceeding 20% of the sale price of the meal, that is added to the price of the meal by the seller, and required to be paid by the purchaser, as a part of the selling price of the meal, ~~and~~ is subject to the tax imposed by this article.

2. This ordinance shall be effective on and after the date of its adoption.

## TOWN OF HERNDON, VIRGINIA

### ORDINANCE

\_\_\_\_\_, 2006

**Ordinance - Amending the Herndon Town Code BPOL provision to include selection of BPOL license due date between March 1 and May 1 and other technical changes.**

BE IT ORDAINED by the Council of the Town of Herndon that:

1. Section 30-211 Definitions, Herndon Town Code (2000), as amended, is amended and reordained as follow:

#### **Sec. 30-211. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

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Jeopardized by delay means a finding, based upon specific facts, that a taxpayer ~~desires~~ designs to (i) depart quickly from the town; (ii) remove his or her property therefrom; (iii) conceal himself, or herself, or property therein; or (iv) do any other act tending to prejudice, or to render wholly or partially ineffectual, proceedings to collect the tax for the period in question.

\*\*\*

2. Section 30-213 Application, Herndon Town Code (2000), as amended, is amended and reordained as follow:

#### **Sec. 30-213. Application.**

(a) Each person subject to a license tax shall apply for a license prior to beginning business, if he or she was not subject to licensing in this town on or before January 1 of the license year, or no later than March 1 [or some other date on or before May 1 selected by Town Council] of the current license year if he or she had been issued a license for the preceding license year. The application shall be on forms prescribed by the assessing official.

(b) The tax shall be paid with the application in the case of any license not based on gross receipts. If, the tax is measured by the gross receipts of the business, the tax shall be paid on or before ~~March 1~~ the town's due date for filing license applications or 30 days after beginning business, as appropriate.



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3. This ordinance shall be effective on and after the date of its adoption.

## TOWN OF HERNDON, VIRGINIA

### ORDINANCE

\_\_\_\_\_, 2006

**Ordinance - Amending the Herndon Town Code provision regarding transient lodging tax to clarify that the tax only applies to sleeping rooms, not other space rented in a hotel or motel.**

BE IT ORDAINED by the Council of the Town of Herndon that:

1. Section 30-176 Definitions, Herndon Town Code (2000), as amended, is amended and reordained as follow:

#### **Sec. 30-176. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

\*\*\*

*Lodging* means occupancy of any rooms which are designed to allow for the provision of overnight accommodations and any other related spaces provided for persons suitable or intended for occupancy by transients for dwelling, lodging, or sleeping purposes.

\*\*\*

2. This ordinance shall be effective on and after the date of its adoption.



## TOWN OF HERNDON, VIRGINIA

### ORDINANCE

\_\_\_\_\_, 2006

**Ordinance - Amending the Herndon Town Code to provide delinquent tax penalties do not exceed the amount of the tax assessable.**

BE IT ORDAINED by the Council of the Town of Herndon that:

1. Section 30-39. Date real property taxes due and payable; penalties and interest, Herndon Town Code (2000), as amended, is amended and reordained as follow:

**Sec. 30-39. Date real property taxes dues and payable; penalties and interest.**

\*\*\*

(b) Upon failure to pay any installment when due, a penalty of ten percent will be incurred and assessed, and interest will accrue and be assessed on any unpaid tax and penalty at the rate of ten percent per annum beginning the first day following the day such taxes are due. For the second and subsequent years of delinquency, interest will accrue and be assessed on any unpaid tax at a rate of interest established pursuant to section 6621 of the Internal Revenue Code, as amended, or ten percent annually, whichever is greater. Any penalty assessed shall become a part of the tax and in no case shall exceed the amount of the tax assessable.

2. Section 30-181. Penalty and interest for nonremittance, Herndon Town Code (2000), as amended, is amended and reordained as follow:

**Sec. 30-181. Penalty and interest for nonremittance.**

If any person required by the provisions of this article to do so shall fail or refuse to report and remit to the town the taxes required to be collected and paid to the town under this article within the time and in the amount as provided for in this article, there shall automatically be added to the liability of such person to the town a penalty in the amount of ten percent of the tax not timely reported and remitted to the town, provided that the penalty shall in no case exceed the amount of the tax assessable. Moreover, if the tax and penalty remain delinquent and unpaid for a period of ten days from the date such tax was due and payable, interest shall accrue in favor of the town commencing with the date such taxes were due and payable at the rate of five-sixths of one percent per month, for each month or portion thereof, upon the amount of the tax and penalty remaining unpaid.

3. Section 30-407. Violations; liability of officers; penalties and interest, Herndon Town Code (2000), as amended, is amended and reordained as follow:

**Sec. 30-407. Violations; liability of officers; penalties and interest.**

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(d) If any person shall fail to pay a tax, imposed by this article, when due, the director shall assess a penalty of ten percent of the tax past due or ten dollars, whichever is greater; provided, that the penalty shall in no case exceed the amount of the tax ~~due~~ assessable. The penalty for failure to pay any tax shall be assessed on the day after the tax is due. Any such penalty shall become a part of the tax.

\*\*\*

4. This ordinance shall be effective on and after the date of its adoption.